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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,805	11/30/2001	Charles Martinka	121 P 120	6621

26568 7590 09/16/2003

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200 WEST ADAMS STREET  
CHICAGO, IL 60606

EXAMINER

SMITH, JAMES G

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 09/16/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/997,805

Applicant(s)

MARTINKA, CHARLES

Examiner

James G. Smith

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 12 December 2001 is entered and is being considered by the examiner. The lined through references are those already cited by the examiner.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The second elongated member is claimed in claim 8 as being "pivotable about the pivot pin", however as the pin is disclosed as being riveted to the member there can be no pivoting of this member about the pin. Also, the stop pin is claimed as being on the same second member and it is "adapted to abut the intermediate portion of the second member" which is impossible.

It appears that the "second" should be "first" in both instances.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 8 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over either Marti or Brass in view of Litchfield.

Either Marti or Brass shows the claimed invention except for the use of a spring mounted in the slot to bias the jaws into a closed position. Litchfield suggests that a pliers tool can have such a spring mounted in the slot to bias the jaws into a closed position. It would therefore be obvious to one skilled in the art at the time the invention was made to modify either Marti or Brass by using a spring mounted in the slot to bias the jaws into a closed position because Litchfield suggests the use of such a holding notch.

Further, the use of a "stop pin", instead of a pawl or tooth, is obvious as all three are equivalent stops.

6. Claims 4 and 5 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over either Marti or Brass in view of Litchfield as applied to claims 1-3 above, and further in view of Wilbur.

Either Marti or Brass, as modified by Litchfield, shows the claimed invention except for the use of a retaining pin mounted within the coil spring to stabilize the spring. Wilbur suggests that a pliers can have such a retaining pin mounted within the coil spring to stabilize the spring. It would therefore be obvious to one skilled in the art at the time the invention was made to modify either Marti or Brass by using a retaining pin mounted within the coil spring to stabilize the spring because Wilbur suggests the use of such a retaining pin mounted within the coil spring to stabilize the spring.

7. Claims 6 and 7 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over either Marti or Brass in view of Litchfield as applied to claims 1-3 above, and further in view of Ping.

Either Marti or Brass, as modified by Litchfield, shows the claimed invention except for the construction of the tool by means of a series of riveted plates. Ping suggests that a pliers can be made by using a series of riveted plates. It would therefore be obvious to one skilled in the art at the time the invention was made to modify either Marti or Brass by making the pliers of a series of riveted plates because Ping suggests the use of such a construction in pliers.

### ***Response to Arguments***

8. Applicant's arguments filed 28 July 2003 have been fully considered but they are not persuasive.

New claim 8 is merely a combination of original claims 1-3 and therefore suffers from the same ambiguity as claims 1 and 2. Further, if this claim is amended in same manner as claims 1 and 2, it would be a duplicate of claim 3 and so objected to.

With respect to the obviousness rejection of claims 1-3 and new claim 8, applicant argues that the combination is based on hindsight, however this is in error. One skilled in the art would clearly be motivated to make the stated combination as Litchfield suggests that biasing the pivot pin within the slot is a well known mechanical feature in adjustable pliers, thus this reference provides the clear suggestion required by the cited court decisions.

There are no specific arguments with respect to the Wilbur or Ping, therefore these claims, i.e. claims 4-7, will stand with claims 1-3 and 8.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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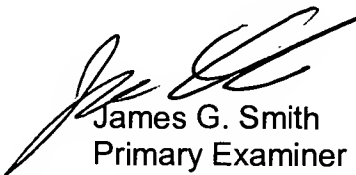
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Smith whose telephone number is 703-308-1746. The examiner can normally be reached on M-Th (7:05- 4:35) first Fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 703-308-2687. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
James G. Smith  
Primary Examiner  
Art Unit 3723

jgs  
9/15/03